

March 19, 1986

NOTICE OF HEARING

IN THE MATTER OF: Particulate Emission Limitations, Rule 203(g)(1) and 202(b) of Chapter 2

BOARD DOCKET NO.: R82-1, Docket B

PURPOSE OF HEARING: Merit hearing for further consideration of the opacity rules (35 Ill. Adm. Code 212.121 and 212.123). The Board established a separate docket in this proceeding by Order of March 14, 1986 (copy attached) to further consider the opacity rules. That action was taken in response to a letter filed with the Board on February 27, 1986 and a press release issued on March 10, 1986, by the USEPA indicating the federal unapprovability of the opacity rules as proposed for Third Second Notice (copies of press release and letter attached). The Board's March 14 Order sets forth the type of information the Board is interested in receiving at hearing.

As noted in the March 14 Order, if the Board does not have final rules on file with the Secretary of State's Office by July 12, 1986, the Board must recommence the first notice period which would greatly delay final action. Since the second notice period will not be commenced until after hearing (if the Board decides to proceed), the time frame is very tight. Therefore, there will be little or no opportunity to submit additional comments or briefs after the hearing. For that reason the Board requests that all participants who intend to testify at hearing submit written testimony to all other participants on the notice list two weeks prior to hearing, or as soon thereafter as possible. If complete written testimony cannot be provided, a summary will suffice. Further, if you wish to present final arguments, please be prepared to do so orally on the record.

DATE AND LOCATION: Monday, April 28, 1986
11:00 a.m.
Board Conference Room
Suite 11-500
100 W. Randolph
Chicago, IL 60601

ATTENDING BOARD MEMBER: Jacob D. Dumelle, Chairman

HEARING OFFICER: Lee R. Cunningham


Lee R. Cunningham, Hearing Officer

ILLINOIS POLLUTION CONTROL BOARD
March 14, 1986

IN THE MATTER OF:

PARTICULATE EMISSION LIMITATIONS,
RULE 203(g)(1) AND 202(b) OF
CHAPTER 2

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) R82-1, Dockets A and B
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INTERIM ORDER OF THE BOARD (by J.D. Dumelle):

On February 6, 1986, the Board adopted a Proposed Rule/Third Second Notice Order in this matter proposing the adoption of particulate and visible emission limitations, granting a motion by the Illinois Environmental Protection Agency (Agency) to reconsider, and denying an Agency motion to establish a separate docket and to reopen the record and schedule a hearing on the opacity limitation. Since that time the Board has received a letter filed on February 27, 1986 from Steve Rothblatt of Region 5 of the United States Environmental Protection Agency (USEPA) indicating USEPA's position that the opacity limitation, as presently proposed, is unapprovable as a revision to the state implementation plan pursuant to 40 CFR 51.19(c), in that it does not allow for "the enforcement of appropriate visible emission limitations" as he argues is required thereunder. Furthermore, the Board received a USEPA news release on March 10, 1986 indicating the USEPA may "impose another growth moratorium" on the state due to the failure of the state to promulgate acceptable rules. This would ban the construction and modification of major industrial particulate sources in some parts of the state. While the Board rejected similar arguments presented by the Agency, these communications from USEPA place a cloud over the opacity rules: the state is required to comply with the Clean Air Act and regulations adopted thereunder, and USEPA's interpretation of its own rules must be given some deference .

There does not, however, appear to be any problem with the proposed rules other than the opacity rules, and the Board sees no reason to delay final adoption of those rules during further consideration of the opacity rules. Therefore, the Board will proceed with the filing of those rules for second notice as R82-1, Docket A, as contemplated in the February 6 Order and will separate out the opacity rules for further consideration.

The Board hereby establishes a docket B to this proceeding to further consider the adoption of 35 Ill. Adm. Code 212.121 and 212.123. The hearing officer shall schedule an additional hearing to consider the opacity rules as expeditiously as practicable.

Finally, the Board notes that final rulemaking on this matter must occur on or before July 12, 1986 or the Board will be required to recommence the first notice process under the Administrative Procedure Act. At hearing the Board is particularly interested in receiving testimony regarding the legal requirements of the state implementation plan regarding visual emissions, what type or types of rules would or should be federally approvable, the adequacy of the present record to support the adoption of such rules, additional testimony in support of, or in opposition to, the adoption of opacity standards, and proposed revisions to those rules which are both supported by the record and federally approvable. The Board specifically requests that USEPA provide a witness to testify regarding its position on these rules.

IT IS SO ORDERED.

Board Member B. Forcade concurred.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 14th day of March, 1986 by a vote of 7-0.

Dorothy M. Gunn
Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

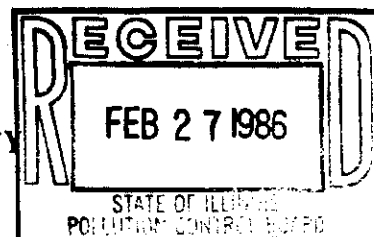


UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

230 SOUTH DEARBORN ST.

CHICAGO, ILLINOIS 60604



R82-1
REPLY TO THE ATTENTION OF

f.c. # 34

FEB 26 1986

Mr. Jacob D. Dumelle
Chairman
Illinois Pollution Control Board
State of Illinois Center
100 West Randolph Street
Chicago, Illinois 60601

Dear Mr. Dumelle:

This letter concerns the February 6, 1986, third, second notice on R82-1: Rules 203(g)(1) and 202(h). These rules were remanded by the Illinois Appellate Court on September 27, 1978. On July 12, 1979 (44 FR 40723), USEPA issued a Notice of Deficiency in this matter.

My staff and I have completed a preliminary review of this proposed action. The purpose of this letter is to register our very serious concerns with the Board's proposal. The proposal to modify 35 Ill. Adm. Code 212.123(a) regarding the opacity standard cannot be approved by USEPA if it is finally adopted in the form presently contemplated by the Board. We have discussed this proposal with our Headquarters reviewing offices. They agree that USEPA is unable to approve the rule in this form.

Section 51.19(c) of Title 40 of the Code of Federal Regulations clearly requires a State to establish a system for detecting violations of rules and regulations through the enforcement of appropriate visible emission limitations and for investigating complaints. The Board's proposed modification of Section 212.123(a) would preclude the use of visible emissions as an enforcement tool.

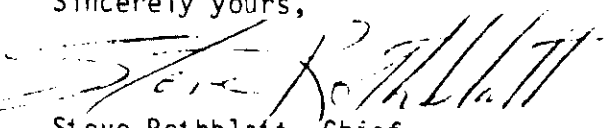
I would also like to take this opportunity to express my concern with the continued delays in the re-adoption of the remanded rules. Nearly seven years have elapsed since USEPA issued a Notice of Deficiency in this matter, yet the Board does not appear to be near adopting replacement rules which are approvable by USEPA.

Region V would have no alternative but to recommend a rulemaking notice proposing to find that the Illinois Part D Particulate SIP no longer meets the requirements of Part D and Section 110 of the Clean Air Act and that the Section 110 (a)(2)(I) major source growth restrictions are re-imposed in all areas not meeting the primary particulate national ambient air quality stan-

dards (NAAQS) unless the Board finally adopts a replacement for the remanded particulate rules which can be approved by USEPA. I wish to remind you that a final finding would ensure that the growth moratorium would remain in effect in these particulate nonattainment areas even after the new source review issue is resolved.

Please make every effort to adopt as expeditiously as possible a replacement for the remanded particulate rules which can be approved by USEPA.

Sincerely yours,

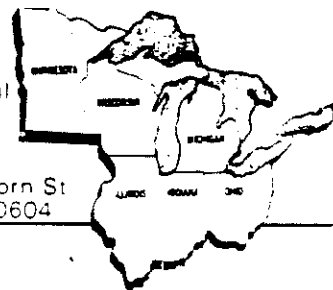


Steve Rothblatt, Chief
Air and Radiation Branch (5AR-26)

cc: Michael J. Hayes, IEPA

EPA Environmental NEWS RELEASE

United States
Environmental
Protection
Agency
Region V
230 S Dearborn St
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Technical Contact: Steve Rothblatt
(312) 353-2211

Media Contact: Virginia Donohue
(312) 886-5694

For Immediate Release: March 10, 1986

NO. 86-47

IPCB ACTION MAY THREATEN STATE'S INDUSTRIAL GROWTH

The Illinois Pollution Control Board's (IPCB's) failure to institute certain air pollution control rules may force the U.S. Environmental Protection Agency (U.S. EPA) to impose another growth moratorium, Steve Rothblatt, U.S. EPA regional chief of the Air and Radiation Branch said today.

Illinois has not had adequate rules to control total suspended particulate (TSP) pollution since 1978, when a State court remanded the State's rules. TSP's are composed of soot, dust, fly ash, and other particules, which may cause irritation or diseases of the eyes and the respiratory tract.

Since that time, IPCB has made several attempts to develop rules for large coal-fired boilers. Its latest proposal eliminates visual emission (opacity) checks as an enforcement tool. However, Federal regulations require that a State be able to take enforcement actions against sources if they fail such checks. By noting the smoke's opacity, environmental inspectors can determine if a source is not in compliance, Rothblatt explained.

- more -

If IPCB issues rules that fail to meet Federal requirements, U.S. EPA will have to impose another growth moratorium in Illinois. This would ban the construction and modification of major industrial TSP-pollution sources in parts of the State that are not meeting the national health standard for particulates. Coal-fired boilers are the major industrial source of TSP's.

Areas violating the health standard for TSP's are: Addison, Blackhawk, Calumet, Cicero, Decatur, DuPage, Granite City, Hampton, Hyde Park, Joliet, LaSalle, Lockport, Lyons, Moline, Nameoki, North Town, parts of St. Clair County, South Moline, South Rock Island, South Stickney, South Town, Venice, West Town, Wood River, and Worth. A growth moratorium already exists in these areas due to another deficiency in the State's regulations.

Rothblatt said: "U.S. EPA is very reluctant to impose a growth moratorium in Illinois; IPCB has put us in a very awkward position. The Board has refused for the past 7 years to take any constructive action on this issue. But it needs to develop TSP control rules that met Federal guidelines, which have been designed to protect public health and the environment. If IPCB fails to do so, it will force us to impose a growth moratorium."

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R82-1 Notice List

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